

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2933 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 and 2 Yes 3 to 5 No

GUJARAT TOBACCO MERCHANTS ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

MR SI NANAVATI for Petitioner
MR UA TRIVEDI, A.G.P. for Respondent No. 1
MR KS JHAVERI for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/08/97

ORAL JUDGEMENT

The petitioner challenges the Notification dated 4.3.1997 at Annexure-'C' to the petition by which the Government declared that the ten market areas shall cease to be such areas and added the agricultural produce of tobacco in the market areas of the 30 Market Committees named therein.

2. It was contended on behalf of the petitioner that draft Notification showing the intention of the Director was published on 2.3.1994 as per Annexure-A to the petition in the Official Gazette and also in a Gujarati daily but it was not published as required by Rule 3 of the Gujarat Agricultural Produce Market Rules, 1965 which requires that a Notification issued under sub-section (1) of Section 5 or sub-section (1) of Section 6 shall also be published by affixing a copy in Gujarati thereof at a conspicuous place in the office of each of the local authorities functioning in the area specified in the Notification. It was submitted that this Notification was finally published on 4.3.1997 in the Gazette and Gujarati paper but it was not published in the manner prescribed by Rule 3 of the said Rules in the local authorities of Thasara, Anand and Vadodara and therefore the Notification cannot operate in the market area of the three Market Committees of Thasara, Anand and Vadodara which are shown at serial Nos. 9, 11 and 12 of the Notification at Annexure-'C' to the petition. It was contended that even if this Notification was treated as one under Section 6(5) of the said Act it was necessary that the provisions of Rule 3 of the said Rules should be complied with before it could operate in the market areas. So far, in respect of the market areas of the said three Committees the local authorities had not received the Notification and therefore it was not published and hence it cannot operate even if it was a Notification under Section 6(5) of the Act. It was contended that by the said Notification simultaneously certain market areas ceased while more market areas were simultaneously specified and therefore it should be treated as an arrangement falling in the latter part of the provisions of Section 52.

3. The learned counsel for the respondents on the other hand contended that the publication as prescribed by Rule 3 of the said Rules was not necessary in respect of the Notification issued under Section 6(5) of the Act and therefore even if it is assumed that the Notification though published in the Gazette and Gujarati newspaper as required by Section 6(5) was not published in the local authorities of Thasara, Anand and Vadodara that would not make any difference because Notifications under Rule 6(5) were not required to be published in that manner. It was also contended that the first part of the Notification was relatable to Section 52 of the Act and the ten market areas mentioned therein had already ceased.

4. The impugned Notification is a composite Notification. In the first part of the Notification it

declares under Section 52 read with Section 5 that the separate market areas ten in number which were declared under the Notification dated 30.6.1997 for regulating tobacco would cease. It is then declared that the item of tobacco will instead of being regulated by those ten market areas be regulated by the market areas of 30 Market Committees named therein. All these 30 Market Committees were already functioning in their respective market areas as noted in the Notification and it is not as if by this Notification any new market area was declared. There is no dispute about the fact that all these 30 Marketing Committees were already functioning in their respective market areas which were declared long before, and they were regulating other items. By this Notification item of tobacco was added to their list. Addition of this item of tobacco was, therefore, clearly relatable to the power exercisable by the Director under the provisions of Section 6(5) of the Act. Therefore, from the reading of the Notification it would appear that to the extent it deals with a declaration regarding the ceasing of 10 market areas named therein in which tobacco was being dealt with by virtue of the earlier Notification dated 30.6.1987, it was relatable to the exercise of powers under Section 52 under which the State Government can make such declaration by a Notification in the Official Gazette. So far this declaration regarding ceasing of the ten earlier market areas dealing in tobacco is concerned, the petitioner has no grievance. They are aggrieved by the fact that in the second part of the Notification the subject of tobacco is entrusted to thirty marketing Committees. According to them the provisions of Rule 3 ought to have been followed in respect of the aforesaid local areas to which the Marketing Committees at serial Nos. 9, 11 and 12 related and therefore at least in the market areas of these three Committees the tobacco should be treated as an unregulated agricultural produce. The latter part of the impugned Notification as noted above is clearly relatable to the provisions of Section 6(5). The fact that that provision is not specifically mentioned and that in the Notification there is a reference only to Section 52 and Section 5 will hardly make any difference. The nature of declaration which is sought to be made is a pointer to the fact that the agricultural produce of tobacco was being included in the market areas of these thirty Committees. There was no question of any division of the earlier market areas because the market areas of these 30 Committees were already subsisting and they were not newly created by this Notification. The words "or more separate market areas" occurring in Section 52 cannot be read in isolation as was sought to be suggested on behalf

of the petitioner. These are the words occurring in the entire phrase which reads: "or divide a market area into two or more separate market areas". There is clearly no division of any market area into two or more separate market areas by this Notification. Therefore, even by virtue of provisions of Section 52 there is no scope for invoking Rule 3 of the said Rules which applies only to the Notification issued under Section 5(1) and 6(1) of the Act and does not apply to any Notification issued under Section 6(5) of the Act.

5. Provisions of Rule 3 of the said Rules came up for consideration before the Supreme Court in GOVINDLAL VS. AGRICULTURAL PRODUCE MARKETING COMMITTEE reported in AIR 1976 SC 263 and the Hon'ble Supreme Court in paragraph 19 of its judgement held that Rule 3 relates specifically and exclusively to Notifications issued under sub-section (1) of Section or sub-Section (1) of Section 6 of the Act. It was held that as the Supreme Court in that case was concerned with the Notification issued under sub-Section (5) of Section 6 there was no need to go into this question as to whether Rule 3 was complied with. This would clearly indicate that according to Hon'ble the Supreme Court Rule 3 was not attracted in respect of Notifications issued under Section 6(5) of the Act.

6. Under the above circumstances, there is no substance in this petition and it is rejected. Notice is discharged with no order as to costs.

7. At this stage the learned counsel for the petitioner submits that the ad-interim relief which was operating may be allowed to continue in respect of three market areas of the aforesaid three Committees at serial No. 9,11, and 12 namely Thasara, Anand and Vadodara to enable the petitioners to approach the appellate court. Ad-interim relief confined to these three market areas of the three Committees will continue upto 19.8.1997 to enable the petitioners to challenge this order before the appellate forum.

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